

**CHEMUNORWA CHIKOSHA**

**Versus**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE

MAKONESE J

BULAWAYO 3 FEBRUARY AND 3 MARCH 2022

**Bail Pending Trial**

Applicant in person  
*T.M Nyathi*, for the respondent

**MAKONESE J:** This is an application for bail pending trial. Applicant is facing a charge of unlawful possession of raw ivory in contravention of Section 82(1) of the Parks and Wildlife Act 128 (b) of the Parks and Wildlife Act (Chapter 20:14) as amended in Section 11 of the General Law Amendment 5/2011 “possession of raw unmarked or unregistered ivory. The applicant denies the charges and contends that he is a proper candidate for bail. The State opposes this application.

**Factual Background**

The State alleges that on the 1<sup>st</sup> October 2021 near ZRP Mzilikazi, Bulawayo, the applicant and his co-accused were walking along the pavement heading towards Makokoba bus terminus. 1st accused was carrying a satchel. When the police stopped the two, accused one dropped the satchel

and fled. The police chased and caught him. The police searched the satchel and found some ivory. After investigations, the police realised that the applicant co-owned that ivory together with 1st accused.

The applicant who is not legally represented filed a detailed hand-written bail statement citing sections of the Constitution of Zimbabwe and relevant case law on the aspect of bail. In his bail statement applicant avers that he is a family man with three children of fixed abode, that he should be released on bail pending trial and that he will be able to stand trial.

The respondent opposed this application on two main grounds that:

- (i) the applicant is likely to abscond if granted bail pending trial.
- (ii) the Investigating Officer's affidavit indicates that the applicant has a pending case at the Harare Magistrates Court CRB 1034/21 and has a warrant of arrest for absconding.

During his oral submissions, applicant claimed that the matter in CRB1034/21 was finalised. This is not true. In *Masopo v The State* HB226/21, I reiterated that:-

“In applications of this nature, and where the court is not conducting a trial of the matter, the applicant is required to place before the court all the material facts surrounding the commission of the offence. The court is less likely to exercise its discretion in favour of an applicant who seeks to conceal vital information to the court.”

An applicant in a bail application has a duty to disclose all material facts to the court. Further, applicant made no attempt to furnish this court with what his defence will be. In *S v Ndlovu* 2001(2) ZLR 26 the court held that:-

“It is desirable for an accused person to lay before the court in a bail application what his defence will be at trial as such has a bearing on the assurances that he will indeed stand trial”.

### **The Law Relating to Bail Pending Trial**

The law on bail is well traversed in this and other jurisdictions. The court must exercise its wide discretion and weigh the applicant’s personal interests against the interests of the due administration of justice. Bail must be granted where there is no danger to the interests of justice. In bail applications the courts are guided by section 50 and 70 of the Constitution of Zimbabwe (Amend No. 20) 2013 as read together with Section 117 of the Criminal Procedure and Evidence Act (Chapter 9:07). Section 50 of the Constitution provides that:-

“Any accused person who is arrested

(d) must be released unconditionally or on reasonable conditions pending a charge or trial, unless there are compelling reasons justifying their continued detention.”

Section 70(1) of the Constitution provides that:-

“Any person accused of an offence has the following rights

(a) to be presumed innocent until proved guilty”

Section 117 subsection (2) (a) of the Act provides that the refusal to grant bail and detention of an accused in custody shall be in the interests of justice where one or more of the following grounds are established:-

(a) Where there is a likelihood that the accused, if he or she were released on bail will:

(i) endanger the safety of the public or any particular person or will commit an offence referred to in the First Schedule or

- (ii) not stand his or her trial or appear to receive sentence or,
- (iii) attempt to influence or intimidate witnesses or to conceal or destroy evidence or,
- (iv) undermine or jeopardise the objectives or proper functioning of the criminal justice system, including the bail system.

The courts have interpreted the meaning of compelling reasons in several decided cases. In cases where the applicant in a bail application is likely to abscond or is a flight risk, this will be deemed to be a compelling reason. On the facts of this case it is not disputed that the applicant and his co-accused were found in possession of 8 pieces of raw ivory. The seriousness of an offence on its own does not lead to a conclusion that an accused person is unlikely to stand trial. It is not disputed that the applicant has a warrant of arrest for a case of a similar matter. The applicant clearly has a propensity to abscond and is currently on a warrant of arrest.

For these reasons, I find that applicant is not a suitable candidate for bail. The administration of justice would be compromised if applicant is granted bail as he may be tempted to flee to avoid trial.

In the circumstances, the application be and is hereby dismissed.

Applicant in person

*National Prosecuting Authority*, respondent's legal practitioners.